United Nations A/HRC/26/NGO/48

General Assembly

Distr.: General
4 June 2014

English only

Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04167
1404167

Please recycle

INDIA: Extrajudicial Executions

1. High prevalence of extrajudicial executions in a jurisdiction indicates deep problems within its rule of law framework. The higher the number and frequency of such murders, state sponsored or otherwise, the more rooted the problems in the criminal justice process. To this direct correlation, India is no exception.

2. There are, however, no credible statistics available regarding the number and frequency of such killings in India. Neither does the state, which includes the human rights commission, nor does the civil society have an accurate estimate concerning the number of persons killed extra-judicially in India. What is available is a rough regional or state-wise estimate where extrajudicial executions are more frequent.

3. This lack of information is partly due to the fundamental failure of the Indian state to maintain a functioning policing architecture, especially relating to complaints and investigative procedures. Additionally, many cases of extrajudicial executions are undertaken by state agencies themselves, i.e. police and military units. Often such executions are tagged and referred to as 'killed in armed encounter'. Information provided by the state concerning such 'encounters' are invariably biased and tampered with by state agencies. So, even when skills and resources are available, civil society organisations find it difficult to separate fact from fiction in such cases.

4. The Asian Legal Resource Centre (ALRC) disagrees with the UN Special Rapporteur's conclusion about the situation in India, i.e. the conclusion drawn by the Rapporteur following his visit to India in March 2012. The Rapporteur failed to observe that the central deficit in the criminal justice framework in India, one that promotes extrajudicial executions, is the absence of the rule of law.

5. The claim that the country has a constitution often termed a 'living document', but lacks the political will to ensure that the 'life' guaranteed under the constitution is upheld in all circumstances, has a ring of truth to it. What is required is national commitment to guarantee the rule of law and fair trial, under all circumstances.

6. This will require complete overhaul of India's policing apparatus, so every uniformed officer can be accountable for what the officer does and fails to do at all levels. This will require equipping the police to engage in policing as expected in a democratic setup. It calls for immediate and substantial changes in the policing policy, from one where police is used as a tool for social control to another where police is but another organ of the state equipped and trained to deliver services to all citizens.

7. Such a change would make complaining about an extrajudicial execution the duty of the state through the police and not the responsibility of the victim's family. A policy change in such a direction means that each custodial death and 'encounter' will be investigated by the state, promptly and effectively. Such a change will require the provision of adequate protection to witnesses. It will also mandate prompt adjudication of cases, cutting the delays that that make cases run on for decades. It will also demand a complete overhaul of existing facilities for undertaking scientific crime investigations, which, at the moment, are inadequate in every Indian state.

8. All of the above, however, follow from a political decision. It is a decision that has the potential to change the corrupt political and law-enforcement landscape of India. Such a paradigm shift will end the corrupt and criminal politicians in India.

9. A drastic and structured shift in state policy – to improve the functioning of the criminal justice apparatus in India and make it capable of delivering justice to all – will substantially reduce internal armed conflict in India. Regions, such as the states of Jammu and Kashmir, Manipur, Assam, and Chhattisgarh, where intense armed conflict exists are regions where corrupt and parochial administrative polices are followed to broker fractional political interests. The safety, dignity, and equal rights of citizens are compromised in such an environment.

10. Extrajudicial execution is not an aberration in the day-to-day functioning of India's security agencies. It is the natural by-product of maintaining the status quo in which these agencies operate. Ineptitude, corruption, impunity, and torture are norms and preparedness, honesty, and accountability the exceptions.

11. What prevails in India is a rule by fear, not the rule of law. The result is a paralysis of fair trial guarantees. This has to change. Expectations, based on recommendations made by the Rapporteur, to investigate, prosecute, and adjudicate extrajudicial executions, without suggesting a paradigm shift in the policy of the Indian State, will bear no fruit. Such recommendations, irrespective of the frequency with which they are made, will never render results. This is because the political policy followed by the Indian State is to discourage investigations of human rights abuses committed by state agencies, to maintain a culture of fear.

12. If extrajudicial executions in India are to end, a change in policy is critical. Life has to be breathed into institutions to enable them to protect the life and property of every citizen. Until such a change happens extrajudicial executions in India will recur.